

SENATE BILL No. 215

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-5-1-6.5; IC 35-38-1-7.1; IC 35-48-4-18.

Synopsis: Immunity for certain alcohol and drug offenses. Prohibits a law enforcement officer from taking a person into custody for certain controlled substance offenses if the officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that: (1) the officer has contact with the person because the person requested emergency medical assistance, or acted in concert with another person who requested emergency medical assistance, for an individual who reasonably appeared in need of medical assistance due to alcohol consumption or the use of a controlled substance; and (2) the person meets other requirements. Specifies that a person may not bring an action against a law enforcement officer based on the officer's compliance with or failure to comply with this prohibition. Provides that a person meeting these conditions is immune from criminal prosecution for certain alcohol offenses and offenses relating to controlled substances, and provides a mitigating circumstance for the sentencing of persons to whom the immunity does not apply if the person's arrest or prosecution was facilitated in part because the person requested emergency medical assistance for an individual in need of medical assistance due to the use of alcohol or a controlled substance.

Effective: July 1, 2014.

Stoops

January 9, 2014, read first time and referred to Committee on Corrections & Criminal Law.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 215

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-5-1-6.5, AS ADDED BY P.L.93-2012,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 6.5. (a) A law enforcement officer may not take
4 a person into custody based solely on the commission of an offense
5 involving alcohol **or a controlled substance** described in subsection
6 (b) if the law enforcement officer, after making a reasonable
7 determination and considering the facts and surrounding
8 circumstances, reasonably believes that all of the following apply:
9 (1) The law enforcement officer has contact with the person
10 because the person either:
11 (A) requested emergency medical assistance; or
12 (B) acted in concert with another person who requested
13 emergency medical assistance;
14 for an individual who reasonably appeared to be in need of
15 medical assistance due to alcohol consumption **or the use of a**
16 **controlled substance.**



(2) The person described in subdivision (1)(A) or (1)(B):

(A) provided:

(i) the person's full name; and

(ii) any other relevant information requested by the law enforcement officer;

(B) remained at the scene with the individual who reasonably appeared to be in need of medical assistance due to alcohol consumption **or the use of a controlled substance** until emergency medical assistance arrived; and

(C) cooperated with emergency medical assistance personnel and law enforcement officers at the scene.

(b) A person who meets the criteria of subsection (a)(1) and (a)(2) is immune from criminal prosecution for an offense under:

(1) section 3 of this chapter if the offense involved a state of intoxication caused by the person's use of alcohol **or a controlled substance**;

(2) section 6 of this chapter if the offense involved the person being, or becoming, intoxicated as a result of the person's use of alcohol **or a controlled substance**; and

(3) IC 7.1-5-7-7.

(c) A person may not initiate or maintain an action against a law enforcement officer based on the officer's compliance or failure to comply with this section.

SECTION 2. IC 35-38-1-7.1, AS AMENDED BY P.L.126-2012, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances:

(1) The harm, injury, loss, or damage suffered by the victim of an offense was:

(A) significant; and

(B) greater than the elements necessary to prove the commission of the offense.

(2) The person has a history of criminal or delinquent behavior.

(3) The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.

(4) The person:

(A) committed a crime of violence (IC 35-50-1-2); and

(B) knowingly committed the offense in the presence or within hearing of an individual who:

(i) was less than eighteen (18) years of age at the time the



- 1 person committed the offense; and
- 2 (ii) is not the victim of the offense.
- 3 (5) The person violated a protective order issued against the
- 4 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
- 5 IC 34-4-5.1 before their repeal), a workplace violence restraining
- 6 order issued against the person under IC 34-26-6, or a no contact
- 7 order issued against the person.
- 8 (6) The person has recently violated the conditions of any
- 9 probation, parole, pardon, community corrections placement, or
- 10 pretrial release granted to the person.
- 11 (7) The victim of the offense was:
- 12 (A) a person with a disability (as defined in IC 27-7-6-12), and
- 13 the defendant knew or should have known that the victim was
- 14 a person with a disability; or
- 15 (B) mentally or physically infirm.
- 16 (8) The person was in a position having care, custody, or control
- 17 of the victim of the offense.
- 18 (9) The injury to or death of the victim of the offense was the
- 19 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 20 (10) The person threatened to harm the victim of the offense or a
- 21 witness if the victim or witness told anyone about the offense.
- 22 (11) The person:
- 23 (A) committed trafficking with an inmate under
- 24 IC 35-44.1-3-5; and
- 25 (B) is an employee of the penal facility.
- 26 (b) The court may consider the following factors as mitigating
- 27 circumstances or as favoring suspending the sentence and imposing
- 28 probation:
- 29 (1) The crime neither caused nor threatened serious harm to
- 30 persons or property, or the person did not contemplate that it
- 31 would do so.
- 32 (2) The crime was the result of circumstances unlikely to recur.
- 33 (3) The victim of the crime induced or facilitated the offense.
- 34 (4) There are substantial grounds tending to excuse or justify the
- 35 crime, though failing to establish a defense.
- 36 (5) The person acted under strong provocation.
- 37 (6) The person has no history of delinquency or criminal activity,
- 38 or the person has led a law-abiding life for a substantial period
- 39 before commission of the crime.
- 40 (7) The person is likely to respond affirmatively to probation or
- 41 short term imprisonment.
- 42 (8) The character and attitudes of the person indicate that the



person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(12) The person was convicted of a crime relating to alcohol or a controlled substance and the person's arrest or prosecution was facilitated in part because the person:

(A) requested emergency medical assistance; or

(B) acted in concert with another person who requested emergency medical assistance;

for an individual who reasonably appeared to be in need of medical assistance due to the use of alcohol or a controlled substance.

(c) The criteria listed in subsections (a) and (b) do not limit the matters that the court may consider in determining the sentence.

(d) A court may impose any sentence that is:

(1) authorized by statute; and

(2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

SECTION 3. IC 35-48-4-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 18. (a) A law enforcement officer may not take a person into custody based solely on the commission of an offense relating to a controlled substance described in subsection (b) or (c) if the law enforcement officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that all the following apply:**

(1) The law enforcement officer has contact with the person because the person:

(A) requested emergency medical assistance; or

(B) acted in concert with another person who requested emergency medical assistance;

for an individual who reasonably appeared to be in need of medical assistance due to the use of alcohol or a controlled



substance.

(2) The person described in subdivision (1)(A) or (1)(B):

(A) provided:

(i) the person's full name; and

(ii) any other relevant information requested by the law enforcement officer;

(B) remained at the scene with the individual who reasonably appeared to be in need of medical assistance due to the use of alcohol or a controlled substance until emergency medical assistance arrived; and

(C) cooperated with emergency medical assistance personnel and law enforcement officers at the scene.

(b) A person who meets the criteria of subsection (a)(1) and (a)(2) is immune from criminal prosecution or an action to enforce an infraction for the following offenses:

(1) Possession of cocaine or a narcotic drug classified in schedule I or II as a Level 6 felony under section 6 of this chapter.

(2) Possession of methamphetamine as a Level 6 felony under section 6.1 of this chapter.

(3) Possession of a schedule I, II, III, or IV controlled substance as a Class A misdemeanor under section 7 of this chapter.

(4) Possession of paraphernalia under section 8.3 of this chapter.

(5) Possession of marijuana, hash oil, hashish, or salvia as a misdemeanor under section 11 of this chapter.

(6) Possession of a synthetic drug or synthetic drug lookalike substance as an infraction or misdemeanor under section 11.5 of this chapter.

(7) Visiting a common nuisance under section 13 of this chapter.

(8) Taking a minor or endangered adult to a location used for the possession, manufacture, or sale of a controlled substance under section 13.3 of this chapter.

(c) A person who is immune from prosecution or an action to enforce an infraction under subsection (b) is also immune from prosecution for a conspiracy or an attempt to commit the offense or infraction.

(d) A person may not initiate or maintain an action against a law enforcement officer based on the officer's compliance or failure to comply with this section.

